

BILL ANALYSIS

C.S.H.B. 1714
By: Smith
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the Texas Commission on Environmental Quality's (TCEQ) compliance history program has limited usefulness and marginal practical benefit and places a laborious and financial burden on TCEQ. These parties further contend that TCEQ may be better served by developing guidelines for a more thorough and useful program regarding compliance history. C.S.H.B. 1714 seeks to remedy this issue by discontinuing the compliance history program.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 1714 repeals Water Code provisions relating to Texas Commission on Environmental Quality (TCEQ) performance-based regulation applicable to programs under the jurisdiction of TCEQ under the Injection Well Act, the Subsurface Area Drip Dispersal System Act, the Solid Waste Disposal Act, the Texas Clean Air Act, the Texas Radiation Control Act, and provisions governing water quality control and the removal of convenience switches. The bill repeals, among other provisions, provisions requiring TCEQ by rule to develop standards for evaluating and using compliance history that ensure consistency, provisions requiring TCEQ by rule to provide for the use of compliance history in certain TCEQ decisions, and provisions regarding the collection and analysis of compliance performance information. The bill retains provisions relating to regulatory flexibility.

C.S.H.B. 1714 amends the Water Code to make changes relating to the bill's repeal of certain provisions and to make certain other changes. The bill changes references to a compliance history to references to a record of compliance for the preceding five years. The bill authorizes a permit under TCEQ's program of regulatory flexibility to satisfy a requirement to demonstrate need by showing need on a regional basis considering economic impacts. The bill authorizes TCEQ at a regular meeting without the necessity of holding a public hearing to approve an application to renew or amend a permit relating to the discharge of waste or pollutants into or adjacent to water in Texas if, among other things, TCEQ determines that an applicant's record of compliance for the preceding five years raises no issues regarding the applicant's ability to comply with a material term of its permit. The bill requires TCEQ in considering the issuance, amendment, or renewal of a permit to discharge effluent comprised primarily of sewage or municipal waste to consider the record of compliance for the preceding five years of the applicant and its operator.

C.S.H.B. 1714 requires TCEQ after a hearing to deny or suspend a discharger's authority to discharge waste into or adjacent to waters in the state under an applicable general permit if TCEQ determines that the discharger operates any facility for which the discharger's record of compliance for the preceding five years contains violations that constitute a recurring pattern of

egregious conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations. The bill specifies a similar requirement regarding the denial or suspension of authorization for the use of an injection well under an applicable general permit authorizing the use of a Class I injection well to inject nonhazardous brine from a desalination operation or to inject nonhazardous drinking water treatment residuals.

C.S.H.B. 1714 amends the Health and Safety Code to make changes relating to the bill's repeal of certain provisions and to make certain other changes. The bill changes references to a compliance history to references to a record of compliance for the preceding five years. The bill removes a specification, contained in the requirement under the Solid Waste Disposal Act that TCEQ by rule establish a procedure to prepare compliance summaries relating to an applicant's solid waste management activities, that such procedure be in accordance with the method for evaluating compliance history that is repealed by the bill. The bill restricts the evidence of a final determination of noncompliance with federal statutes or statutes of any state concerning solid waste management by an applicant for a solid waste management facility permit under the act that may be offered by a party at a hearing concerning an application and admitted into evidence to evidence of such a final determination in the preceding five years. The bill authorizes TCEQ for good cause to deny or amend a permit it issues or has authority to issue for having a record of compliance for the preceding five years that contains violations that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations. The bill authorizes TCEQ to deny an original or renewal permit if it is found after notice and hearing that the applicant or permit holder has a record of compliance for the preceding five years at the permitted site that contains violations that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations. The bill requires TCEQ, before denying an applicable permit under the act, to find that the applicant or permit holder has a record of compliance for the preceding five years at the permitted site that contains violations that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

C.S.H.B. 1714 authorizes TCEQ, in considering the issuance, amendment, or renewal of a preconstruction permit under the Texas Clean Air Act, to consider the applicant's record of compliance for the preceding five years. The bill requires TCEQ, in determining whether and under which conditions a preconstruction permit should be renewed, to consider the record of compliance for the preceding five years. The bill authorizes TCEQ to hold a hearing on a preconstruction permit amendment, modification, or renewal if TCEQ determines that the application involves a facility for which the applicant's record of compliance for the preceding five years contains unresolved violations that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

C.S.H.B. 1714 authorizes TCEQ, in making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a license or registration under the Texas Radiation Control Act, to consider those aspects of an applicant's or license holder's background that bear materially on the ability to fulfill the obligations of licensure, including technical competence, financial qualifications, and the applicant's or license holder's record of compliance in areas involving radiation. The bill requires TCEQ to consider an applicant's record of compliance for the preceding five years in making a licensing decision on a specific license application to process or dispose of low-level radioactive waste from other persons.

C.S.H.B. 1714 repeals the following provisions of the Water Code:

- the heading to Subchapter Q, Chapter 5

- Section 5.751
- Section 5.752
- Section 5.753
- Section 5.754
- Section 5.755
- Section 5.756
- Section 5.757
- Section 27.051(h)

C.S.H.B. 1714 repeals the following provisions of the Health and Safety Code:

- Section 361.0215(c)
- Section 361.088(g)

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1714 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Sections 361.084(a), (c), and (d), Health and Safety Code, are amended to read as follows:

SECTION 1. Sections 361.084(a), (c), and (d), Health and Safety Code, are amended to read as follows:

(a) The commission by rule shall establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities [~~in accordance with the method for evaluating compliance history developed by the commission under Section 5.754, Water Code~~]. A compliance summary shall include as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the authorization is sought. In this subsection, "environmental management system" has the meaning assigned by Section 5.127, Water Code.

(a) The commission by rule shall establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities [~~in accordance with the method for evaluating compliance history developed by the commission under Section 5.754, Water Code~~]. A compliance summary shall include as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the authorization is sought. In this subsection, "environmental management system" has the meaning assigned by Section 5.127, Water Code.

(c) Evidence of compliance or noncompliance by an applicant for a solid waste management facility permit with agency rules, permits, other orders, or evidence of a final determination of

(c) Evidence of compliance or noncompliance by an applicant for a solid waste management facility permit with agency rules, permits, other orders, or evidence of a final determination of

noncompliance with federal statutes or statutes of any state in the preceding five years concerning solid waste management may be:

- (1) offered by a party at a hearing concerning the application; and
 - (2) admitted into evidence subject to applicable rules of evidence.
- (d) The commission shall consider all evidence admitted, including the record of compliance [history], in determining whether to issue, amend, extend, or renew a permit.

SECTION 2. Section 361.088(f), Health and Safety Code, is amended.

SECTION 3. Sections 361.089(a), (e), and (f), Health and Safety Code, are amended to read as follows:

- (a) The commission may, for good cause, deny or amend a permit it issues or has authority to issue for reasons pertaining to public health, air or water pollution, or land use, or for a violation of this chapter or other applicable laws or rules controlling the management of solid waste [having a compliance history that is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections].

(e) The commission may deny an original or renewal permit if it is found, after notice and hearing, that:

- (1) the applicant or permit holder has a record of environmental violations in the preceding five years at the permitted site;
- (2) the applicant has a record of environmental violations in the preceding five years at any site owned, operated, or controlled by the applicant [compliance history that is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections];

noncompliance with federal statutes or statutes of any state in the preceding five years concerning solid waste management may be:

- (1) offered by a party at a hearing concerning the application; and
 - (2) admitted into evidence subject to applicable rules of evidence.
- (d) The commission shall consider all evidence admitted, including the record of compliance for the preceding five years [history], in determining whether to issue, amend, extend, or renew a permit.

SECTION 2. Same as introduced version.

SECTION 3. Sections 361.089(a), (e), and (f), Health and Safety Code, are amended to read as follows:

- (a) The commission may, for good cause, deny or amend a permit it issues or has authority to issue for reasons pertaining to public health, air or water pollution, or land use, or for having a record of compliance for the preceding five years that contains violations that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations [history that is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections].

(e) The commission may deny an original or renewal permit if it is found, after notice and hearing, that:

- (1) the applicant or permit holder has a record of compliance for the preceding five years at the permitted site that contains violations that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations [history that is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections];

(3) ~~(2)~~ the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees;

(4) ~~(3)~~ the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the commission; or

(5) ~~(4)~~ the permit holder or applicant is unable to ensure that the management of the hazardous waste management facility conforms or will conform to this title and the rules of the commission.

(f) Before denying a permit under this section, the commission must find:

(1) that a violation or violations are significant and that the permit holder or applicant has not made a substantial attempt to correct the violations ~~[the applicant or permit holder has a compliance history that is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections];~~ or

(2) that the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the commission.

SECTION 4. Section 375.101(a), Health and Safety Code, is amended.

SECTION 5. Section 382.0216(j), Health and Safety Code, is amended to read as follows:

(j) The commission shall account for and consider chronic excessive emissions events and emissions events for which the commission has initiated enforcement in the manner set forth by the commission in its review of an entity's record of compliance ~~[history]~~.

SECTION 6. Section 382.0518(c), Health

(2) the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees;

(3) the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the commission; or

(4) the permit holder or applicant is unable to ensure that the management of the hazardous waste management facility conforms or will conform to this title and the rules of the commission.

(f) Before denying a permit under this section, the commission must find:

(1) that the applicant or permit holder has a record of compliance for the preceding five years at the permitted site that contains violations that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations ~~[history that is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections];~~ or

(2) that the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the commission.

SECTION 4. Same as introduced version.

SECTION 5. Section 382.0216(j), Health and Safety Code, is amended to read as follows:

(j) The commission shall account for and consider chronic excessive emissions events and emissions events for which the commission has initiated enforcement in the manner set forth by the commission in its review of an entity's record of compliance for the preceding five years ~~[history]~~.

SECTION 6. Section 382.0518(c), Health

and Safety Code, is amended to read as follows:

(c) In considering the issuance, amendment, or renewal of a permit, the commission may consider any adjudicated decision or compliance proceeding within the five years before the date on which the application was filed that addressed the applicant's past performance and compliance with the laws of this state, another state, or the United States governing air contaminants or with the terms of any permit or order issued by the commission ~~[the applicant's compliance history in accordance with the method for using compliance history developed by the commission under Section 5.754, Water Code]~~.

In considering an applicant's record of compliance ~~[history]~~ under this subsection, the commission shall consider as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the permit, permit amendment, or permit renewal is sought. In this subsection, "environmental management system" has the meaning assigned by Section 5.127, Water Code.

SECTION 7. Section 382.055(d), Health and Safety Code, is amended to read as follows:

(d) In determining whether and under which conditions a preconstruction permit should be renewed, the commission shall consider, at a minimum:

(1) whether the [performance of the owner or operator of the] facility is or has been in substantial compliance with this chapter and the terms of the existing permit ~~[according to the method developed by the commission under Section 5.754, Water Code]~~; and

(2) the condition and effectiveness of existing emission control equipment and practices.

SECTION 8. Section 382.056(o), Health and Safety Code, is amended to read as follows:

(o) Notwithstanding other provisions of this chapter, the commission may hold a hearing on a permit amendment, modification, or renewal if the commission determines that

and Safety Code, is amended to read as follows:

(c) In considering the issuance, amendment, or renewal of a permit, the commission may consider the applicant's record of compliance for the preceding five years ~~[history in accordance with the method for using compliance history developed by the commission under Section 5.754, Water Code]~~.

In considering an applicant's record of compliance ~~[history]~~ under this subsection, the commission shall consider as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the permit, permit amendment, or permit renewal is sought. In this subsection, "environmental management system" has the meaning assigned by Section 5.127, Water Code.

SECTION 7. Section 382.055(d), Health and Safety Code, is amended to read as follows:

(d) In determining whether and under which conditions a preconstruction permit should be renewed, the commission shall consider, at a minimum:

(1) the record of compliance for the preceding five years [performance] of the owner or operator of the facility ~~[according to the method developed by the commission under Section 5.754, Water Code]~~; and

(2) the condition and effectiveness of existing emission control equipment and practices.

SECTION 8. Section 382.056(o), Health and Safety Code, is amended to read as follows:

(o) Notwithstanding other provisions of this chapter, the commission may hold a hearing on a permit amendment, modification, or renewal if the commission determines that

the application involves a facility for which the applicant's record of compliance contains unresolved violations constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations [~~history is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections~~].

SECTION 9. Section 382.401(b), Health and Safety Code, is amended to read as follows:

(b) The commission by rule shall establish a program that allows the owner or operator of a facility regulated under this chapter to use voluntarily as a supplemental detection method any leak detection technology that has been incorporated and adopted by the United States Environmental Protection Agency into a program for detecting leaks or emissions of air contaminants. The program must provide regulatory incentives to encourage voluntary use of the alternative leak detection technology at a regulated facility that is capable of detecting leaks or emissions that may not be detected by methods or technology approvable under the commission's regulatory program for leak detection and repair in effect on the date the commission adopts the program. The incentives may include:

(1) on-site technical assistance; and
(2) to the extent consistent with federal requirements:
(A) inclusion of the facility's use of alternative leak detection technology in the owner or operator's record of compliance [~~history~~] and compliance summaries;

(B) consideration of the implementation of alternative leak detection technology in scheduling and conducting compliance inspections; and

(C) credits or offsets to the facility's emissions reduction requirements based on the emissions reductions achieved by voluntary use of alternative leak detection technology.

the application involves a facility for which the applicant's record of compliance **for the preceding five years** contains unresolved violations that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations [~~history is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections~~].

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(b) The commission by rule shall establish a program that allows the owner or operator of a facility regulated under this chapter to use voluntarily as a supplemental detection method any leak detection technology that has been incorporated and adopted by the United States Environmental Protection Agency into a program for detecting leaks or emissions of air contaminants. The program must provide regulatory incentives to encourage voluntary use of the alternative leak detection technology at a regulated facility that is capable of detecting leaks or emissions that may not be detected by methods or technology approvable under the commission's regulatory program for leak detection and repair in effect on the date the commission adopts the program. The incentives may include:

(1) on-site technical assistance; and
(2) to the extent consistent with federal requirements:
(A) inclusion of the facility's use of alternative leak detection technology in the owner or operator's record of compliance **for the preceding five years** [~~history~~] and compliance summaries;

(B) consideration of the implementation of alternative leak detection technology in scheduling and conducting compliance inspections; and

(C) credits or offsets to the facility's emissions reduction requirements based on the emissions reductions achieved by voluntary use of alternative leak detection technology.

SECTION 10. Section 401.110, Health and Safety Code, is amended to read as follows:
Sec. 401.110. DETERMINATION ON LICENSE. (a) In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a license or registration, the commission may consider those aspects of an applicant's or license holder's background that bear materially on the ability to fulfill the obligations of licensure, including technical competence, financial qualifications, and the applicant's or license holder's record in areas involving radiation [~~compliance history under the method for using compliance history developed by the commission under Section 5.754, Water Code~~].

(b) In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a license or registration, the department may consider the technical competence, financial qualifications, and record of compliance [~~history~~] of an applicant, license holder, or registration holder.

After an opportunity for a hearing, the department shall deny an application for a license or registration, license or registration amendment, or license or registration renewal if the applicant's record of compliance [~~history~~] reveals a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process through significant violations of this chapter or the department's rules adopted under this chapter.

SECTION 11. Section 401.112(a), Health and Safety Code, is amended to read as follows:

(a) The commission, in making a licensing decision on a specific license application to process or dispose of low-level radioactive waste from other persons, shall consider:

- (1) site suitability, geological, hydrological, and meteorological factors, and natural hazards;
- (2) compatibility with present uses of land near the site;
- (3) socioeconomic effects on surrounding communities of operation of the licensed activity and of associated transportation of

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(b) In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a license or registration, the department may consider the technical competence, financial qualifications, and record of compliance for the preceding five years [~~history~~] of an applicant, license holder, or registration holder.

After an opportunity for a hearing, the department shall deny an application for a license or registration, license or registration amendment, or license or registration renewal if the applicant's record of compliance for the preceding five years [~~history~~] reveals a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process through significant violations of this chapter or the department's rules adopted under this chapter.

SECTION 11. Section 401.112(a), Health and Safety Code, is amended to read as follows:

(a) The commission, in making a licensing decision on a specific license application to process or dispose of low-level radioactive waste from other persons, shall consider:

- (1) site suitability, geological, hydrological, and meteorological factors, and natural hazards;
- (2) compatibility with present uses of land near the site;
- (3) socioeconomic effects on surrounding communities of operation of the licensed activity and of associated transportation of

low-level radioactive waste;

- (4) the need for and alternatives to the proposed activity, including an alternative siting analysis prepared by the applicant;
- (5) the applicant's qualifications, including:
 - (A) financial and technical qualifications and past operating practices [~~compliance history under the method for using compliance history developed by the commission under Section 5.754, Water Code, for an application to the commission~~]; and
 - (B) the demonstration of financial qualifications under Section 401.108;
- (6) background monitoring plans for the proposed site;
- (7) suitability of facilities associated with the proposed activities;
- (8) chemical, radiological, and biological characteristics of the low-level radioactive waste and waste classification under Section 401.053;
- (9) adequate insurance of the applicant to cover potential injury to any property or person, including potential injury from risks relating to transportation;
- (10) training programs for the applicant's employees;
- (11) a monitoring, record-keeping, and reporting program;
- (12) spill detection and cleanup plans for the licensed site and related to associated transportation of low-level radioactive waste;
- (13) decommissioning and postclosure care plans;
- (14) security plans;
- (15) worker monitoring and protection plans;
- (16) emergency plans; and
- (17) a monitoring program for applicants that includes prelicense and postlicense monitoring of background radioactive and chemical characteristics of the soils, groundwater, and vegetation.

SECTION 12. Section 401.243, Health and Safety Code, is amended to read as follows:
Sec. 401.243. RECORD OF COMPLIANCE [~~HISTORY~~]. After an opportunity for a hearing, the commission shall deny an application for a license under this subchapter or an amendment or renewal for a license under this subchapter if the

low-level radioactive waste;

- (4) the need for and alternatives to the proposed activity, including an alternative siting analysis prepared by the applicant;
- (5) the applicant's qualifications, including:
 - (A) financial and technical qualifications and record of compliance for the preceding five years [~~history under the method for using compliance history developed by the commission under Section 5.754, Water Code, for an application to the commission~~]; and
 - (B) the demonstration of financial qualifications under Section 401.108;
- (6) background monitoring plans for the proposed site;
- (7) suitability of facilities associated with the proposed activities;
- (8) chemical, radiological, and biological characteristics of the low-level radioactive waste and waste classification under Section 401.053;
- (9) adequate insurance of the applicant to cover potential injury to any property or person, including potential injury from risks relating to transportation;
- (10) training programs for the applicant's employees;
- (11) a monitoring, record-keeping, and reporting program;
- (12) spill detection and cleanup plans for the licensed site and related to associated transportation of low-level radioactive waste;
- (13) decommissioning and postclosure care plans;
- (14) security plans;
- (15) worker monitoring and protection plans;
- (16) emergency plans; and
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SECTION 12. Section 401.243, Health and Safety Code, is amended to read as follows:
Sec. 401.243. RECORD OF COMPLIANCE [~~HISTORY~~]. After an opportunity for a hearing, the commission shall deny an application for a license under this subchapter or an amendment or renewal for a license under this subchapter if the

applicant's record of compliance [~~history~~] reveals a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process through a history of violations of this chapter or the commission's rules under this chapter.

SECTION 13. Section 5.127(b), Water Code, is amended to read as follows:

(b) The commission by rule shall adopt a comprehensive program that provides regulatory incentives to encourage the use of environmental management systems by regulated entities, state agencies, local governments, and other entities as determined by the commission. The incentives may include:

- (1) on-site technical assistance;
- (2) accelerated access to information about programs; and
- (3) to the extent consistent with federal requirements:

(A) inclusion of information regarding an entity's use of an environmental management system in the entity's record of compliance [~~history~~] and compliance summaries; and

(B) consideration of the entity's implementation of an environmental management system in scheduling and conducting compliance inspections.

SECTION 14. Section 5.1733, Water Code, is amended to read as follows:

Sec. 5.1733. ELECTRONIC POSTING OF INFORMATION. The commission shall post public information on its website. Such information shall include but not be limited to the minutes of advisory committee meetings, pending permit and enforcement actions, records of compliance [~~histories~~], and emissions inventories by county and facility name.

SECTION 15. Section 5.758, Water Code, is transferred, redesignated, and amended.

SECTION 16. Section 7.070, Water Code, is amended to read as follows:

applicant's record of compliance for the preceding five years [~~history~~] reveals a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process through a history of violations of this chapter or the commission's rules under this chapter.

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- (1) on-site technical assistance;
- (2) accelerated access to information about programs; and
- (3) to the extent consistent with federal requirements:

(A) inclusion of information regarding an entity's use of an environmental management system in the entity's record of compliance for the preceding five years [~~history~~] and compliance summaries; and

(B) consideration of the entity's implementation of an environmental management system in scheduling and conducting compliance inspections.

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SECTION 15. Same as introduced version.

SECTION 16. Section 7.070, Water Code, is amended to read as follows:

Sec. 7.070. FINDINGS OF FACT NOT REQUIRED; RESERVATIONS.

Notwithstanding any other provision to the contrary, the commission is not required to make findings of fact or conclusions of law other than an uncontested finding that the commission has jurisdiction in an agreed order compromising or settling an alleged violation of a statute within the commission's jurisdiction or of a rule adopted or an order or a permit issued under such a statute. An agreed administrative order may include a reservation that:

- (1) the order is not an admission of a violation of a statute within the commission's jurisdiction or of a rule adopted or an order or a permit issued under such a statute;
- (2) the occurrence of a violation is in dispute; or
- (3) the order is not intended to become a part of a party's or a facility's record of compliance [history].

SECTION 17. Sections 26.028(d) and (e), Water Code, are amended.

SECTION 18. Section 26.0281, Water Code, is amended to read as follows:

Sec. 26.0281. PAST PERFORMANCE AND COMPLIANCE [HISTORY].

In considering the issuance, amendment, or renewal of a permit to discharge effluent comprised primarily of sewage or municipal waste, the commission shall consider any adjudicated decision or [the] compliance proceeding addressing past performance and compliance [history] of the applicant and its operator with the laws of this state governing waste discharge, waste treatment, or waste disposal facilities and with the terms of any permit or order issued by the commission [under the method for using compliance history developed by the commission under Section 5.754]. In considering an applicant's record of compliance [history] under this subsection, the commission shall consider as evidence of compliance information regarding the applicant's implementation of an environmental management system at the

Sec. 7.070. FINDINGS OF FACT NOT REQUIRED; RESERVATIONS.

Notwithstanding any other provision to the contrary, the commission is not required to make findings of fact or conclusions of law other than an uncontested finding that the commission has jurisdiction in an agreed order compromising or settling an alleged violation of a statute within the commission's jurisdiction or of a rule adopted or an order or a permit issued under such a statute. An agreed administrative order may include a reservation that:

- (1) the order is not an admission of a violation of a statute within the commission's jurisdiction or of a rule adopted or an order or a permit issued under such a statute;
- (2) the occurrence of a violation is in dispute; or
- (3) the order is not intended to become a part of a party's or a facility's record of compliance for the preceding five years [history].

SECTION 17. Same as introduced version.

SECTION 18. Section 26.0281, Water Code, is amended to read as follows:

Sec. 26.0281. RECORD OF COMPLIANCE [HISTORY].

In considering the issuance, amendment, or renewal of a permit to discharge effluent comprised primarily of sewage or municipal waste, the commission shall consider the record of compliance for the preceding five years [history] of the applicant and its operator [under the method for using compliance history developed by the commission under Section 5.754]. In considering an applicant's record of compliance [history] under this subsection, the commission shall consider as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the permit, permit amendment, or permit renewal is sought. In this section, "environmental management system" has the meaning assigned by Section 5.127.

facility for which the permit, permit amendment, or permit renewal is sought. In this section, "environmental management system" has the meaning assigned by Section 5.127.

SECTION 19. Section 26.040(h), Water Code, is amended to read as follows:

(h) Notwithstanding other provisions of this chapter, the commission, after hearing, shall deny or suspend a discharger's authority to discharge under a general permit if the commission determines that the discharger operates any facility for which the discharger's record of compliance contains violations constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations [~~history is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections~~]. A hearing under this subsection is not subject to Chapter 2001, Government Code.

SECTION 20. Section 27.025(g), Water Code, is amended to read as follows:

(g) Notwithstanding the other provisions of this chapter, the commission, after hearing, shall deny or suspend authorization for the use of an injection well under a general permit if the commission determines that the owner operates any facility for which the owner's record of compliance contains violations constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations [~~history is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections~~]. A hearing under this subsection is not subject to the requirements relating to a contested case hearing under Chapter 2001, Government Code.

SECTION 19. Section 26.040(h), Water Code, is amended to read as follows:

(h) Notwithstanding other provisions of this chapter, the commission, after hearing, shall deny or suspend a discharger's authority to discharge under a general permit if the commission determines that the discharger operates any facility for which the discharger's record of compliance for the preceding five years contains violations that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations [~~history is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections~~]. A hearing under this subsection is not subject to Chapter 2001, Government Code.

SECTION 20. Section 27.025(g), Water Code, is amended to read as follows:

(g) Notwithstanding the other provisions of this chapter, the commission, after hearing, shall deny or suspend authorization for the use of an injection well under a general permit if the commission determines that the owner operates any facility for which the owner's record of compliance for the preceding five years contains violations that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations [~~history is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections~~]. A hearing under this subsection is not subject to the requirements relating to a contested case hearing under Chapter 2001, Government Code.

SECTION 21. Section 27.051(d), Water Code, is amended to read as follows:

(d) The commission, in determining if the use or installation of an injection well is in the public interest under Subsection (a)(1), shall consider, but shall not be limited to the consideration of:

(1) ~~the record of compliance [history] of the applicant and related entities [under the method for using compliance history developed by the commission under Section 5.754 and]~~ in accordance with the provisions of Subsection (e);

(2) whether there is a practical, economic, and feasible alternative to an injection well reasonably available; and

(3) if the injection well will be used for the disposal of hazardous waste, whether the applicant will maintain sufficient public liability insurance for bodily injury and property damage to third parties that is caused by sudden and non-sudden accidents or will otherwise demonstrate financial responsibility in a manner adopted by the commission in lieu of public liability insurance. A liability insurance policy which satisfies the policy limits required by the hazardous waste management regulations of the commission for the applicant's proposed pre-injection facilities shall be deemed "sufficient" under this subdivision if the policy:

(A) covers the injection well; and

(B) is issued by a company that is authorized to do business and to write that kind of insurance in this state and is solvent and not currently under supervision or in conservatorship or receivership in this state or any other state.

SECTION 22. Section 27.051(e), Water Code, as amended by Chapters 347 (S.B. 324), 965 (H.B. 2912), and 1161 (H.B. 2997), Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(e) ~~The [Consistent with Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections, the]~~ commission shall establish a procedure for the preparation of comprehensive summaries of the applicant's record of compliance [history], including the record

SECTION 21. Section 27.051(d), Water Code, is amended to read as follows:

(d) The commission, in determining if the use or installation of an injection well is in the public interest under Subsection (a)(1), shall consider, but shall not be limited to the consideration of:

(1) the record of compliance for the preceding five years ~~[history] of the applicant and related entities [under the method for using compliance history developed by the commission under Section 5.754 and]~~ in accordance with the provisions of Subsection (e);

(2) whether there is a practical, economic, and feasible alternative to an injection well reasonably available; and

(3) if the injection well will be used for the disposal of hazardous waste, whether the applicant will maintain sufficient public liability insurance for bodily injury and property damage to third parties that is caused by sudden and non-sudden accidents or will otherwise demonstrate financial responsibility in a manner adopted by the commission in lieu of public liability insurance. A liability insurance policy which satisfies the policy limits required by the hazardous waste management regulations of the commission for the applicant's proposed pre-injection facilities shall be deemed "sufficient" under this subdivision if the policy:

(A) covers the injection well; and

(B) is issued by a company that is authorized to do business and to write that kind of insurance in this state and is solvent and not currently under supervision or in conservatorship or receivership in this state or any other state.

SECTION 22. Section 27.051(e), Water Code, as amended by Chapters 347 (S.B. 324), 965 (H.B. 2912), and 1161 (H.B. 2997), Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(e) ~~The [Consistent with Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections, the]~~ commission shall establish a procedure for the preparation of comprehensive summaries of the applicant's record of compliance for the preceding five years

of compliance [history] of any corporation or business entity managed, owned, or otherwise closely related to the applicant.

A compliance summary must include as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which an authorization is sought. The summaries shall be made available to the applicant and any interested person after the commission has completed its technical review of the permit application and prior to the promulgation of the public notice relating to the issuance of the permit.

Evidence of compliance or noncompliance by an applicant for an injection well permit with environmental statutes and the rules adopted or orders or permits issued by the commission may be offered by any party at a hearing on the applicant's application and admitted into evidence subject to applicable rules of evidence. ~~[In accordance with this subsection and Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections, evidence of the compliance history of an applicant for an injection well may be offered at a hearing on the application and may be admitted into evidence, subject to the rules of evidence.]~~

Evidence of an applicant's record of [the] compliance [history of an applicant] for an injection well permit may be offered by the executive director at a hearing on the application and admitted into evidence subject to the rules of evidence.

All evidence admitted, including the record of compliance [history], shall be considered by the commission in determining whether to issue, amend, extend, or renew a permit.

If the commission concludes that the applicant's record of compliance [history] is unacceptable, the commission shall deny the permit. In this subsection, "environmental management system" has the meaning assigned by Section 5.127.

SECTION 23. Sections 32.101(c) and (d), Water Code, are amended to read as follows:

[history], including the record of compliance for the preceding five years [history] of any corporation or business entity managed, owned, or otherwise closely related to the applicant.

A compliance summary must include as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which an authorization is sought. The summaries shall be made available to the applicant and any interested person after the commission has completed its technical review of the permit application and prior to the promulgation of the public notice relating to the issuance of the permit.

Evidence of compliance or noncompliance by an applicant for an injection well permit with environmental statutes and the rules adopted or orders or permits issued by the commission may be offered by any party at a hearing on the applicant's application and admitted into evidence subject to applicable rules of evidence. ~~[In accordance with this subsection and Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections, evidence of the compliance history of an applicant for an injection well may be offered at a hearing on the application and may be admitted into evidence, subject to the rules of evidence.]~~

Evidence of an applicant's record of [the] compliance for the preceding five years [history of an applicant] for an injection well permit may be offered by the executive director at a hearing on the application and admitted into evidence subject to the rules of evidence.

All evidence admitted, including the record of compliance for the preceding five years [history], shall be considered by the commission in determining whether to issue, amend, extend, or renew a permit.

If the commission concludes that the applicant's record of compliance for the preceding five years [history] is unacceptable, the commission shall deny the permit. In this subsection, "environmental management system" has the meaning assigned by Section 5.127.

SECTION 23. Sections 32.101(c) and (d), Water Code, are amended to read as follows:

(c) The commission, in determining if the use or installation of a subsurface area drip dispersal system is in the public interest under Subsection (a)(1), shall consider:

(1) the record of compliance [~~history~~] of the applicant and related entities [~~under the method for using compliance history developed by the commission under Section 5.754 and~~] in accordance with the provisions of Subsection (d) [~~of this section~~];

(2) whether there is a practical, economic, and feasible alternative to a subsurface area drip dispersal system reasonably available; and

(3) any other factor the commission considers relevant.

(d) The commission shall establish a procedure for the preparation of comprehensive summaries of the applicant's record of compliance [~~history~~], including the record of compliance [~~history~~] of any corporation or other business entity managed, owned, or otherwise closely related to the applicant.

The summaries shall be made available to the applicant and any interested person after the commission has completed its technical review of the permit application and prior to giving public notice relating to the issuance of the permit. Evidence of compliance or noncompliance by an applicant for a subsurface area drip dispersal system permit with environmental statutes and the rules adopted or orders or permits issued by the commission may be offered by any party at a hearing on the applicant's application and admitted into evidence subject to applicable rules of evidence.

Evidence of the record of compliance [~~history~~] of an applicant for a subsurface area drip dispersal system permit may be offered by the executive director at a hearing on the application and admitted into evidence subject to the rules of evidence.

The commission shall consider all evidence admitted, including the record of compliance [~~history~~], in determining whether to issue, amend, extend, or renew a permit. If the commission concludes that the applicant's record of compliance [~~history~~] is unacceptable, the commission

(c) The commission, in determining if the use or installation of a subsurface area drip dispersal system is in the public interest under Subsection (a)(1), shall consider:

(1) the record of compliance for the preceding five years [~~history~~] of the applicant and related entities [~~under the method for using compliance history developed by the commission under Section 5.754 and~~] in accordance with the provisions of Subsection (d) [~~of this section~~];

(2) whether there is a practical, economic, and feasible alternative to a subsurface area drip dispersal system reasonably available; and

(3) any other factor the commission considers relevant.

(d) The commission shall establish a procedure for the preparation of comprehensive summaries of the applicant's record of compliance for the preceding five years [~~history~~], including the record of compliance for the preceding five years [~~history~~] of any corporation or other business entity managed, owned, or otherwise closely related to the applicant.

The summaries shall be made available to the applicant and any interested person after the commission has completed its technical review of the permit application and prior to giving public notice relating to the issuance of the permit. Evidence of compliance or noncompliance by an applicant for a subsurface area drip dispersal system permit with environmental statutes and the rules adopted or orders or permits issued by the commission may be offered by any party at a hearing on the applicant's application and admitted into evidence subject to applicable rules of evidence.

Evidence of the record of compliance for the preceding five years [~~history~~] of an applicant for a subsurface area drip dispersal system permit may be offered by the executive director at a hearing on the application and admitted into evidence subject to the rules of evidence.

The commission shall consider all evidence admitted, including the record of compliance for the preceding five years [~~history~~], in determining whether to issue, amend, extend, or renew a permit. If the commission concludes that the applicant's record of compliance for the preceding five

shall deny the permit.

~~years~~ ~~[history]~~ is unacceptable, the commission shall deny the permit.

SECTION 24. The following provisions are repealed:

- (1) the heading to Subchapter Q, Chapter 5, Water Code;
- (2) Sections 5.751, 5.752, 5.753, 5.754, 5.755, 5.756, and 5.757, Water Code;
- (3) Section 361.0215(c), Health and Safety Code;
- (4) Section 361.088(g), Health and Safety Code; and
- (5) Section 27.051(h), Water Code.

SECTION 24. Same as introduced version.

SECTION 25. The change in law made by this Act applies only to an application for a permit, permit amendment, or permit renewal that is filed with the Texas Commission on Environmental Quality on or after the effective date of this Act. An application for a permit, permit amendment, or permit renewal that is filed with the commission before the effective date of this Act is governed by the law in effect on the date the application is filed, and that law is continued in effect for that purpose.

SECTION 25. Same as introduced version.

SECTION 26. This Act takes effect September 1, 2013.

SECTION 26. Same as introduced version.